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16 *Attorneys for Plaintiffs William Clark and Gabrielle Clark*

17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 GABRIELLE CLARK,
20 individually and as parent and
21 guardian of WILLIAM CLARK
22 and WILLIAM CLARK,
23 individually,

24 Plaintiffs

25 v.

26 STATE PUBLIC CHARTER SCHOOL
27 AUTHORITY, DEMOCRACY PREP
PUBLIC SCHOOLS, DEMOCRACY PREP
PUBLIC SCHOOLS, INC., DEMOCRACY
PREP at the AGASSI CAMPUS,
DEMOCRACY PREP NEVADA LLC,
SCHOOL BOARD of Democracy Prep at
the Agassi Campus, NATASHA TRIVERS
individually and in her official capacity as
Superintendent and CEO, ADAM
JOHNSON, individually and in his official
capacity as Executive Director and
Principal, KATHRYN BASS individually
and in her capacity as Teacher, JOSEPH
MORGAN, individually and in his official
capacity as Board Chair, KIMBERLY
WALL individually and in her capacity as
assistant superintendent, and John & Jane
Does 1-20

28 Defendants.

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(702) 382-0711 FAX: (702) 382-5816
Case Number:
2:20-CV-02324-RFB-VCF

**REPLY TO DEFENDANT STATE OF
NEVADA EX REL. STATE PUBLIC
CHARTER SCHOOL AUTHORITY'S
OPPOSITION [ECF 40] TO
PLAINTIFFS' EMERGENCY MOTION
FOR PRELIMINARY INJUNCTION
AND APPLICATION FOR
TEMPORARY RESTRAINING
ORDER [ECF 19]**

1 Plaintiffs Gabrielle and William Clark (collectively “Plaintiffs”) by and through their
2 attorneys of record herein, hereby submit their Reply to Defendant SPCSA’s Opposition [ECF
3 40] to Plaintiffs’ Emergency Motion for Declaratory and Injunctive Relief [ECF 19]. This
4 Reply is made and based upon the papers and pleadings on file herein, the following
5 Memorandum of Points and Authorities, and any oral argument allowed at the time of hearing.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Defendant State Public Charter School Authority (“SPCSA”) is local educational
9 agency that has an affirmative duty and mandate to “act swiftly” to ensure a safe environment
10 free from racial and sexual discrimination for the pupils and parents enrolled in the public
11 charter schools it sponsors, authorizes and monitors. SPCSA violated that duty by tolerating
12 and acquiescing to Democracy Prep at the Agassi Campus’s (“DPAC”) curricular
13 programming that compels speech and openly promotes and constitutes a hostile educational
14 environment. SPCSA’s actions and omissions foreseeably created a racially and sexually
15 hostile environment. Plaintiffs seek an order that SPCSA observe and comply with its anti-
16 discrimination mandate. Plaintiffs request that Democracy Prep Defendants remove the grade
17 for the class at issue, and seek a temporary restraining order, preliminary and permanent
18 injunction, enjoining and restraining Defendants from hosting and conducting coercive,
19 graded identity confession exercises and a declaration that such exercises, together with
20 stereotype harassment, are harassment, a hostile environment and unconstitutional as violating
21 the Title VI of the Civil Rights Act and Title IX.

22 **II. LEGAL ARGUMENT**

23 **A. SPCSA’S MANDATE AND PURPOSE IS TO PROVIDE THE RELIEF
24 REQUESTED**

25 In their response to Plaintiffs’ motion for preliminary relief, SPCSA maintains that it
26 merely “sponsors” and “authorizes” Nevada charter schools such as DPAC, and thus has no
27
28

1 power to effect the relief sought, and bears no responsibility for the harms alleged.¹ In fact,
 2 SPCSA's legislative mandate is much more robust than "sponsoring" and "authorizing," and
 3 its affirmative duty to monitor educational programs and ensure compliance through
 4 "intervention" with state and federal anti-discrimination laws is delineated in both its contract
 5 with Democracy Prep Defendants and Nevada State Law.²

6 SPCSA concedes that Nevada law requires SPCSA to "safeguard the interests of
 7 pupils"³ and its contract with DPAC avers with regard to curriculum that "the education
 8 program shall meet or exceed Nevada's content standards,"⁴ yet SPCSA still asserts in its
 9 opposition that it has no "ability or power"⁵ to protect Plaintiffs' interests. Defendant
 10 references NRS 388A.366(1)(i)⁶ as a bar to its "power" and proof of the limits of its oversight.
 11 However, a school is required to "provide instruction in [] core academic subjects" does not
 12 preclude a school's supervising body from fulfilling its legal obligation to safeguard the
 13 interests of pupils.

14 SPCSA operates like a school district, monitoring a discrete number of schools and
 15 ensuring compliance with applicable state and federal law concerning student and parental
 16 rights. SPCSA asserts that it "is, in fact, a local education agency or LEA."⁷ Such a designation
 17 hardly demonstrates that SPCSA's hands are tied. NRS 388A.159 states that SPCSA be
 18 "deemed local educational agency for all purposes" where "local educational agency" means
 19 a public board of education or other public authority legally constituted within a State for

21 ¹ See ECF No. 40, p. 1.

22 ² See ECF No. 1. Ex. B., Sec 2.4.1, p. 11

23 ³ See ECF No. 40, p. 3. (citing NRS 388A.150(1)(b)).

24 ⁴ Compl., Ex. B., p. 16, Sec. 3.2.1

25 ⁵ See ECF No. 40, p. 3.

26 ⁶ *Id.*

27 ⁷ See ECF No. 40, p. 2 (fn1).

1 either administrative control or direction of, or to perform a service function for, public
 2 elementary schools or secondary schools in a city, county, township, school district, or of or
 3 for a combination of school districts or counties that is recognized in a State as an
 4 administrative agency for its public elementary schools or secondary schools.” 20 U.S.C.A. §
 5 7801.

6 LEAs are not passive, and, for example, are subject to the Protection of Pupil Rights
 7 Amendment (“PPRA”) of the Hatch Act, which mandates that such agencies develop and
 8 adopt “local policies concerning student privacy.”⁸ Such confessional labeling exercises,
 9 which are serial and plainly apparent in DPAC’s “capstone” curriculum materials and
 10 assignments that SPCSA approved and monitors, are in kind no different than the violative
 11 surveys for which PPRA requires parental consent, notification and good cause:

12 Race/Ethnicity/Nationality: _____
 13 Gender: _____
 14 Socioeconomic Status: _____
 15 Disabilities: _____
 16 Religion: _____
 17 Age: _____
 18 Language: _____⁹

19 As shown in Plaintiffs’ verified Complaint and Exhibits, these labeling exercises are
 20 not mere descriptive surveys: students are asked to categorize themselves according to racial,
 21 sexual and religious identities at the direction a public-school teacher, and then some identities
 22 and not others are pejoratively labeled. Determining and coming to terms with sex and gender
 23 identity, especially for adolescents, is an intimate and profoundly fraught process. Defendants’
 24 curricular exercises demean and invade the privacy of that process for students under their
 25 direction, glibly requiring them to “Label and identify!” gender for “10 points.”¹⁰

26 _____
 27 ⁸ 20 U.S.C. § 1232h(c)

⁹ECF No. 1 at ¶ 35

¹⁰ *Id.* at ¶ 29

1 The normative nature of Democracy Prep's labels that students were asked to assign
 2 to themselves was stark and extreme:

- 3 a. Privilege is "the inherent belief in the inferiority of the oppressed
 4 group"¹¹ and
- 5 b. "oppression" is "malicious or unjust treatment or exercise of power"¹²
 6 and
- 7 c. "oppressors try to strip you try to strip you of your identity and mold you
 8 in a way that will benefit them",¹³ and
- 9 d. "oppression" is "unjust" and
- 10 e. "wrong" regardless of whether individual members of the oppressive
 11 group are "consciously oppressive";¹⁴
- 12 f. "interpersonal sexism is what men do to women";¹⁵
- 13 g. "interpersonal racism is what white people to to people of color";¹⁶
- 14 h. "people of color cannot be racist";¹⁷
- 15 i. "the dominant groups win when you let them make you believe the
 16 ideology they created";¹⁸
- 17 a. "they [dominant groups] hate to see your rise above it".¹⁹

18 The exercises, which carry the imprimatur of institutional Defendants, are
 19 discriminatory on their face, weighing heavier on students of certain identities more than
 20 others. SPCSA knew about this program and tolerates and sponsors such behavior, even as it
 21

22 ¹¹ ECF No. 1, Ex. A. at p. 2

23 ¹² *Id.* at p. 24

24 ¹³ *Id.* at p. 16

25 ¹⁴ *Id.* at p. 11

26 ¹⁵ *Id.* at p. 34

27 ¹⁶ *Id.* at p. 34

28 ¹⁷ *Id.* at p. 25

29 ¹⁸ *Id.* at p. 43

30 ¹⁹ *Id.* at p. 43

1 flouts its anti-discrimination and safe environment mandate and inflicts burdens on that subset
 2 of students who are subject to pejorative labeling. SPSCA's opposition does not deny
 3 knowledge of the aforementioned harmful curricular exercises, but rather professes impotence
 4 in addressing them, because SPSCA says it must defer to a school's right to choose its own
 5 curriculum. A school's discretion to determine its own curriculum cannot amount to a
 6 permission slip to compel protected speech or foreseeably create a hostile environment, and
 7 to suggest as much would contradict SPSCA's own mandate and purpose. SPSCA's oversight
 8 responsibilities are not passive; SPSCA is empowered, mandated and obligated by statute and
 9 contract to direct DPAC Defendants to cease and correct their unlawful conduct, which in this
 10 case violates First Amendment Speech and constitutes a hostile environment pursuant to Title
 11 VI and Title IX. "The primary consideration of the Nevada Legislature in enacting legislation
 12 to authorize charter schools is to serve the best interests of all pupils, including pupils who
 13 may be at risk."²⁰ The SPSCA is specifically empowered to revoke a school's charter "[i]f the
 14 goals of the school set forth in the charter are not reached," and it assures families that it will
 15 take "swift action" to ensure the legal compliance of schools under its authority:

16 We provide our charter schools with the autonomy to innovate in the best
 17 interests of students while **holding them accountable for academic results,**
financial performance, and legal compliance, [We] conduct ongoing
 18 oversight and engagement with SPCSA-sponsored schools and their boards to
 19 clarify performance and compliance expectations, provide transparency about
 20 successes and failures, and take swift action when either performance or
 21 compliance fall short.²¹

22 SPSCA's newly renewed charter contract with DPAC explicitly includes both anti-
 23 discrimination commitments duties to correct for both parties. Under rubric "Intervention,"
 24 the contract states, "[p]ursuant to NRS 388A.150, the Authority shall have broad oversight
 25 authority over the Charter School and may take all reasonable steps necessary to confirm that

26
 27 ²⁰ <https://charterschools.nv.gov/About/Overview/>
 28 ²¹ https://charterschools.nv.gov/uploadedFiles/CharterSchoolsngov/content/Families/Strategic%20Plan%202019_FINAL_ADA.pdf

1 the Charter School is and remains in material compliance with this Charter Contract, the
 2 Charter Application, and applicable law and regulation.”²²

3 DPAC’s graded confessional labeling exercises, which Plaintiffs moved to enjoin,
 4 compel speech and invidiously discriminate on the basis of racial, gender, and sexual identity,
 5 and yet SPSCA acquiesces to the practice. The SPSCA’s knowing toleration of curricular
 6 programming that is coercive, invasive, discriminatory, and indeed unlawful, is a proximate
 7 cause of William Clark’s failing grade, and demonstrates a deliberate indifference to the
 8 students whose “best interests” SPSCA is constituted by law to protect.

9
 10 That SPSCA has been derelict in ensuring a safe environment for pupils is apparent in
 11 William Clark’s case. The Department of Education defines a “racially hostile environment”
 12 as one in which racial harassment is “severe, pervasive or persistent so as to interfere with or
 13 limit the ability of an individual to participate in or benefit from the services, activities or
 14 privileges provided by the recipient.” The declarations of Bentheim and Tishkowitz
 15 specifically described instances where Defendants personal racial prejudices are magnified
 16 into school policy and introduced into curriculum.²³ Complaints of bullying and harassment
 17 were ignored, and racially hostile environment of the school is aggravated by understaffing
 18 and diminished student oversight that is a consequence of broader financial and administrative
 19 mismanagement.²⁴

20
 21 That SPSCA is by disposition loathe to actively monitor and “intervene” at all despite
 22 its express mandate to do so is demonstrated by these past incidents. *Davison v. Santa Barbara*
 23

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 25

 26²² ECF No. 1, Ex. B, “Contract,” at p. 22, sec. 7.1.1.

27²³ ECF No. 20, Bentheim Dec, ¶ 4,16-18; ECF No. 23 Tishkowitz Dec ¶ 10.

28²⁴ ECF No. 23, Tishkowitz Dec, ¶ 6-7;

1 *High Sch. Dist.*, 48 F. Supp. 2d 1225, 1230 (C.D. Cal. 1998) (“an official or a supervisor of
 2 students such as a principal, vice-principal or teacher cannot put her head in the sand once she
 3 has been alerted to a severe and pervasive hostile educational environment.”) SPSCA renewed
 4 its charter with Democracy Prep Defendants in June of 2020 after SPSCA’s current Executive
 5 Director received an exhaustive Whistleblower Letter from a DPAC principal in 2019.²⁵ The
 6 Letter, among other things, alleged fraud and the inflation of attendance and enrollment
 7 numbers to secure public funding, financial misappropriation,²⁶ pervasive privacy violations,
 8 and an understaffed, unsafe environment. A student suicide occurred on campus while a state-
 9 mandated safety protocol was not in place, police were discouraged from responding to
 10 investigations because of ideological theories about policing personally held by certain DPAC
 11 administrators, and immunizations went untracked. SPSCA’s current Executive Director did
 12 not act upon the Whistleblower Letter revelations,²⁷ and renewed DPAC’s charter a year later
 13 in June 2020. Presuming the renewal involved thorough due diligence, SPSCA knew, or
 14 should have known, about the racially discriminatory “capstone” class at the center of DPAC’s
 15 curriculum programming well before the Clarks began making their written complaints in
 16 September of 2020.

17 **B. WILLIAM CLARK IS LIKELY TO PREVAIL ON THE MERITS**

18 William has shown that that SPSCA knew and acquiesced to a learning environment
 19 fraught with racial, gender, and sexual hostility.²⁸ Such an environment interferes with
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24 ²⁵ ECF No. 20, Bentheim Dec., Ex. 1.

25 ²⁶ *Id.* at ¶ 10, Ex. 1

26 ²⁷ *Id.* at ¶ 9, Ex. 1

27 ²⁸ ECF. No. 1, at 35-40; ECF No. 54, Supp Dec of William Clark

1 William's ability to participate in and benefit from his public education. Democracy Prep
2 Defendants, in full view and knowledge of SPSCA, apply pejorative moral labels to individual
3 students on the basis of sex, gender, and race, and oversee a coercive program in which certain
4 students are compelled "unlearn" their heritage and confess their "failings" in graded
5 assignments. These practices are ongoing, and SPSCA is knowingly tolerating a hostile
6 environment regardless of whether it or any one SPSCA official directly created the problem.
7 *Davison v. Santa Barbara High Sch. Dist.*, 48 F. Supp. 2d 1225 (allegations that the school
8 district knowingly permitted a hostile environment were actionable under Title VI regardless
9 of whether intentional discrimination is alleged.)

10
11 SPSCA condones Democracy Prep Defendants' specific practice of endorsing racial,
12 sex, and gender stereotypes as exhibited class material and of conducting mandatory identity
13 labeling exercises which violate Title VI of the Civil Rights and Title IX. No Eleventh
14 Amendment immunity exists for Title VI violation. U.S.C.A. Const. Amend. 11; Civil Rights
15 Act of 1964, § 1003(a)(1), 42 U.S.C.A. § 2000d-7(a)(1). It was foreseeable that a student
16 such as William Clark would conscientiously object to the above-mentioned identity
17 confession exercises. SPSCA, which is legally required to monitor and ensure that the schools
18 it sponsors are compliant with anti-discrimination and harassment law, had the ability to
19 intervene to prevent such practices at DPAC, but negligently chose not to so.

20
21 "Whether a hostile educational environment exists is a question of fact, determined
22 with reference to the totality of the circumstances, including the victim's race and age." *T.V.*
23 *v. Sacramento City Unified Sch. Dist.*, 15-cv-00889, 2016 WL 397604, at *5 (Feb. 2, 2016
24 E.D. Cal.) (quoting *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1033 (9th Cir.
25 1998)); see also *Hartman v. Pena*, 914 F. Supp. 225 (N.D. Ill. 1995) (genuine issue of whether
26 environment of mandatory three-day sexual harassment training was objectively hostile (Title
27
28

1 | VII)).

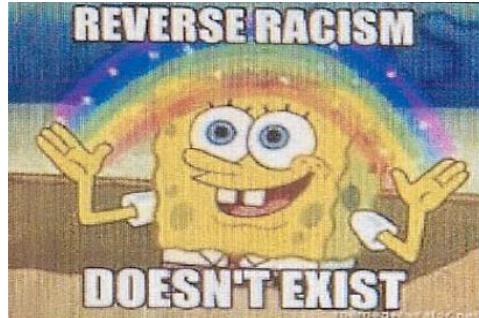
Here, the record clearly shows that William has been deprived of the educational services to which he is entitled by the racially charged atmosphere of the class, which in its first session boiled over with such racial recrimination that class had to be halted.²⁹ The severity and pervasiveness of the hostility is heightened by the fact that here the racial hostility is coming, in large part, from the teacher. Even greater is the apparent moral authority of a teacher (supported by the principal and the entire institutional structure (*see* Bentham Dec. ¶¶ 16-19; Tishkowitz Dec. ¶ 10 Compl ¶ 25) over a high school student, who is less mature and less psychologically secure than a 20-something college student. What's more, DPAC's endorsement of the messaging carries the full weight of government speech. *See Nampa Classical Academy v. Goesling*, 447 Fed. Appx. 776, 778, 275 (9th Cir. 2011) ("Because Idaho charter schools are governmental entities, the curriculum presented in such a school is not the speech of teachers, parents, or students, but that of the Idaho government.").

Yet Ms. Bass—despite knowing that William was the only student in her class who presented as white—used mocking slides featuring cartoon characters to insist that “reverse racism doesn’t exist” and that “people of color CANNOT be racist.” Compl. ¶ 38-39:



Compl Ex A. p. 9

²⁹ ECF No. 1 at ¶ 41.



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5 Compl Ex A. p. 9
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REAL LIFE INTERPERSONAL OPPRESSION

- Interpersonal racism is what white people do to people of color close up
 - The racist jokes
 - The stereotypes
 - The beatings and harassments
 - The threats, etc.
- Interpersonal sexism is what men do to women
 - The sexual abuse and harassment
 - The violence directed at women
 - The belittling or ignoring of women's thinking
 - The sexist jokes, etc.

WOW, YOU SUCK AT MATH.
WOW, GIRLS SUCK AT MATH.

Compl. Ex. A, p. 9.

William, the only pupil regarded as white student in her class, could not help but see such mockery as an invitation to others to attack, and was required to affirm the derogatory labels with regard to himself in graded assignments.³⁰ This and the subsequent retaliatory campaign to withhold accommodation and fail William Clark, SPSCA admits and tolerates.

C. SPSCA IS NOT PREJUDICED BY ALLEGED PROCEDURAL DEFECTS

Plaintiffs counsel spoke with SPSCA on January 8, 2020 regarding the Complaint filed December 22, 2020. Plaintiffs' met and conferred at length with SPSCA General Counsel on

³⁰ ECF. No. 1 at 31-32

1 January 21, 2021 regarding the Complaint and Motion for Preliminary Relief and service
 2 thereof. A subsequent email and phone call to General Counsel followed that same week but
 3 went unreturned. SPSCA had actual notice of the Complaint and Motion and are not
 4 prejudiced by any alleged defects in service, nor does SPSCA have good cause for the
 5 untimely filing of its opposition.
 6

7 **III. CONCLUSION**

8 SPSCA's actions and omissions created a foreseeably racially and sexually hostile
 9 environment. Plaintiffs seek an order that SPSCA comply with its mandate, and request a
 10 temporary restraining order, preliminary and permanent injunction, enjoining and restraining
 11 Defendants from hosting and sponsoring the coercive, graded identity confession and labeling
 12 exercises and a declaration that such exercises, together with official endorsement of race and sex
 13 stereotypes in this context, are harassment, a hostile environment and unconstitutional as violating
 14 the First Amendment to the Constitution of the United States, 42 U.S.C. §§ 1983, the Equal
 15 Protection Clause, Title VI of the Civil Rights Act and Title IX.
 16

17 For these reasons, as well as the reasons stated above, Plaintiffs motion for injunctive
 18 and declaratory relief should be granted.
 19

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **REPLY TO DEFENDANT**
STATE OF NEVADA EX REL. STATE PUBLIC CHARTER SCHOOL
AUTHORITY'S OPPOSITION [ECF 40] TO PLAINTIFFS' EMERGENCY MOTION
FOR PRELIMINARY INJUNCTION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER [ECF 19] with the Clerk of the Court for the United States District
Court by using the court's CM/ECF system on the 16th day of February, 2021.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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